



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Board Date: 2/28/04
Item No. 2

OFFICE OF
THE GENERAL COUNSEL

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April 23, 2004

MEMORANDUM:

TO: Montgomery County Planning Board

FR: Michele Rosenfeld, Associate General Counsel *MR*
301-495-4646

RE: Zoning Text Amendment 04-06 to Eliminate Requirement for Site Plan
Enforcement Agreements

Staff Recommendation: Recommend Adoption of Zoning Text
Amendment 04-06 to County Council. (Attachment One.)

Introduction

Section 59-D-3.3 of the Montgomery County Zoning Ordinance requires an agreement between an applicant for a site plan, and the Planning Board, to ensure that the applicant will "execute all the features of the site plan noted in section 59-D-3.23 in accordance with the development program required in section 59-D-3.23(m)." ("Site Plan Enforcement Agreements). This agreement is also referenced to in other sections of the Code. The District Council adopted this requirement in Zoning Text Amendment No. 80025 on July 21, 1981.

This Zoning Ordinance requirement dates from the time when the Board had very limited authority under Article 28 (the "Regional District Act") to enforce conditions of site plan approval. In 1992, Article 28 was amended to provide that the Planning Board could impose civil monetary fines and penalties, and issue stop work orders. Article 28 § 7-116 (h).¹

¹ These enforcement mechanisms, among other amendments to Article 28, were implemented as a result of the recommendations of the 1991 Regional District Act Task Force Report.

In follow-up to the enactment of this enabling legislation, in 1994, the County Council enacted Section 59-D-3.6 (Failure to comply) of the Zoning Ordinance (ZTA 94017, Adopted October 18, 1994 and effective November 7, 1994). This section of the Zoning Ordinance established Planning Board authority to, among other things: (1) revoke site plan approval; (2) require corrective action; (3) or impose civil fines, penalties, stop work orders and corrective orders under Chapter 50.

Analysis

The Site Plan Enforcement Agreements ("SPEA") were required to create an enforcement mechanism through judicial recourse if a developer did not conform to the conditions of approval. This vehicle is no longer necessary, because the enforcement tools provided in Chapters 50 and 59 (stop work orders, fines, etc.) are more effective than a court action for a number of reasons. First, they're immediate. Second, they are enforced, when necessary, through the District Court, which is a much quicker venue than Circuit Court. Finally, if enforcement of an SPEA is required, then it must occur through the filing of a breach of contract action in Circuit Court, a lengthy, expensive and highly uncertain process, wherein the form of the contract itself could be contested.

In addition to being the less effective means of enforcement, the requirement of SPEAs adds a significant amount of unnecessary procedure to the post-approval development review process. The agreements are submitted to Development Review staff, who review an attached Development Program, and then are submitted to legal staff who review the Agreement itself. Frequently the Agreement must be returned to the applicant for technical corrections, which adds delay. Finally the document is again returned to the Development Review Division. Elimination of the agreement would shorten the time needed for post-approval review.

In lieu of the SPEA, the development program would be required by a condition of approval, as are all of the other elements of a site plan (e.g., building locations, final forest conservation plan approval, landscape and lighting plans). The Zoning Ordinance requires the APEA to run to successors and assigns; as with all conditions of approval, a condition specific to the Development Program likewise will run to successors and assigns notwithstanding the elimination of the requirement for the Agreement.

Conclusion

The Site Plan Enforcement Agreement is an appendage of earlier regulatory schemes, which have been replaced with more effective and

immediate enforcement tools. Staff recommends the elimination of the Site Plan Enforcement Agreement requirement to both better enable staff to enforce violations of development program requirements through citations and stop work orders, and to allow for better streamlining of the post-approval review process by eliminating an unnecessary review procedure. Consequently, staff recommends the Board seek Council approval of this amendment.

MMR:cmd

Attachment

cc: Adrian R. Gardner, General Counsel
Joe Davis, Chief, Development Review Division
Greg Russ, Planning Coordinator, Development Review Division

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Zoning Text Amendment No: 04-06
 Concerning: Site Plan Enforcement
 Agreements - Elimination
 Draft No. & Date: 1 – 3/15/04
 Introduced: March 23, 2004
 Public Hearing: May 4, 2004; 1:30 PM
 Adopted:
 Effective:
 Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
 SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
 THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
 MONTGOMERY COUNTY, MARYLAND**

By: District Council at the request of the Planning Board

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- eliminating the site plan agreement requirement

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C-7	"PLANNED UNIT DEVELOPMENT ZONES"
Section 59-C-7.2	"Town sector zone"
DIVISION 59-D-3	"SITE PLAN"
Section 59-D-3.3	"Agreement"
DIVISION 59-E-3	"NUMBER OF SPACES REQUIRED"
Section 59-E-3.33	"Credits for specified residential uses"
DIVISION 59-F-10	"AUTHORITY"
Section 59-F-10.2	"Sign Review Board"

EXPLANATION: ***Boldface** indicates a heading or a defined term.*

Underlining indicates text that is added to existing laws by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

** * * indicates existing law unaffected by the text amendment.*

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. Division 59-C-7 is amended as follows:

DIVISION 59-C-7. PLANNED UNIT DEVELOPMENT ZONES.

* * *

59-C-7.2. Town sector zone.

* * *

59-C-7.28 Procedures for application and approval.

* * *

(d) In the implementation of subsections 59-C-7.28(b) and (c), above the Planning Board may waive the substantive requirements of chapter 50 and certain requirements of [a] Article 59-E (including the number of parking spaces described in Section 59-E-3.7) upon a finding that the waiver would allow greater flexibility of development consistent with the purposes of the zone and promote more attractive and more efficient overall planning and design; except that the following may not be waived:

* * *

(2) The following provisions of [d] Division 59-D-3 may not be waived:

* * *

[59-D-3.3, "Agreement."]

* * *

Sec. 2. Division 59-D-3 is amended as follows:

DIVISION 59-D-3. SITE PLAN.

* * *

59-D-3.3 [Agreement] Reserved.

[An agreement shall be signed by the applicant and the planning board's designee requiring the applicant to execute all the features of the site plan noted in section 59-D-3.23 in accordance with the development program required in section 59-D-

27 3.23(m). The agreement shall contain language stating that the agreement is also
28 binding upon the applicants, successors and assigns.]

29 * * *

30 **Sec. 3. Division 59-E-3 is amended as follows:**

31 **DIVISION 59-E-3. NUMBER OF SPACES REQUIRED.**

32 * * *

33 **59-E-3.33. Credits for specified residential uses.**

34 * * *

35 (b) For housing and related facilities for senior adults and persons with
36 disabilities, the Director/Planning Board may approve reductions in the
37 standard parking requirements contained in Section 59-E-3.7. Any
38 reductions granted must be in accordance with the following parking credit
39 schedule, which must be applied sequentially, with succeeding percentages
40 applying to the balance:

41

(1)	Located within 1,000 feet of Metrorail station entrance:	5%
(2)	Provision of private shuttle bus service for a minimum of 7 years, with a schedule assured by: <u>1) a special exception granted in accordance with Section 59-G-2.35 or 59-G-2.35.1[,]; or 2) a condition of site plan approval.</u> [enforcement agreement in accordance with Section 59-D-3.3 or other long-term agreement.] Continued shuttle bus service after that period is subject to the parking needs of the specific project, as determined by the Board of Appeals, Planning Board or Director:	10%
(3)	Provision of units that are required to be at or below the	

	price levels for moderately priced dwelling units specified in accordance with Chapter 25A of this Code:	Up to 20% ¹
(4)	Facilities or programs for assisted living, including a dining facility large enough to serve meals to at least 50 percent of the residents, that are assured by a special exception granted in accordance with Section 59-G-2.35 or 59-G-2.35.1 or by a similar long-term agreement:	20%

42

43 1 The percentage reduction must be no greater than the percentage of price-
44 controlled dwelling units in the facility.

45 * * *

46 **Sec. 4. DIVISION 59-F-10 is amended as follows:**

47 **DIVISION 59-F-10. AUTHORITY.**

48 * * *

49 **59-F-10.2. Sign Review Board.**

50 * * *

51 (b) **Powers and Duties.**

52 (1) **Duties.** The Sign Review Board must:

53 * * *

54 (G) **Notification**

55 1. Verify that an applicant for a sign variance has:

56 a. Submitted to the Director with the application for a
57 variance a list of all those to be notified of the
58 hearing. The list must include:

59 * * *

60 iv. The technical staff of [t] The Maryland-
61 National Capital Park and Planning

Commission, if the sign is to be located on
the property [under a Section 59-D-3 site
plan agreement]; and

* * *

Sec. 5. Effective date. This ordinance becomes effective 20 days after the
date of Council adoption.

This is a correct copy of Council action.

Mary A. Edgar, CMC

Clerk of the Council